

D.U.P. NO. 89-15

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION
BEFORE THE DIRECTOR OF UNFAIR PRACTICES

In the Matter of

CAMDEN COUNTY COLLEGE,

Respondent,

-and-

Docket No. CI-89-58

RICHARD ZALESKI,

Charging Party.

SYNOPSIS

The Director refuses to issue a complaint on a charge alleging that the College violated subsections 5.4(a)(1), (3) and (5) of the New Jersey Employer-Employee Relations Act by improperly, arbitrarily and discriminatorily applying non-existent rules concerning academic promotions for one of the professors.

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Appearances:

For the Respondent

William J. Wilhelm, Dean of Personnel & Labor Relations

For the Charging Party

Richard Zaleski, pro se

REFUSAL TO ISSUE COMPLAINT

On January 11, 1989, Richard Zaleski ("Zaleski") filed an unfair practice charge against Camden County College ("College") alleging violations of subsection 5.4(a)(1), (3), (5) and (7)^{1/} of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et

^{1/} These subsections prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act. (3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this act. (5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative. (7) Violating any of the rules and regulations established by the commission."

seq. ("Act"). Zaleski alleges that the College improperly, arbitrarily and in a discriminatory manner applied non-existent rules concerning academic promotions to him.

N.J.S.A. 34:13A-5.4(c) sets forth in pertinent part that the Commission shall have the power to prevent anyone from engaging in an unfair practice, and that it has the authority to issue a complaint stating the unfair practice charged. The Commission has delegated its authority to issue complaints to me and has established a standard upon which an unfair practice complaint may be issued. The standard provides that a complaint shall issue if it appears that the allegations of the charging party, if true, may constitute an unfair practice within the meaning of the Act.^{2/} The Commission's rules provide that I may decline to issue a complaint.^{3/}

For the reasons stated below, it appears that the Commission's complaint issuance standards have not been met.

The charge alleges that the College denied Zaleski a promotion based upon a "point system" used to determine qualifications for promotions and this system was implemented without negotiations.

Zaleski requested that Dr. Somers, the Professional Standards Committee Chairperson, qualify the existence of the point

^{2/} N.J.A.C. 19:14-2.1.

^{3/} N.J.A.C. 19:14-2.3.

system. Somers allegedly responded by stating "weighing factors (points) were used to evaluate recommendations for promotion". Zaleski charges that the applicants were unaware of the point system prior to their application for promotion. He further contends that this point system is not in the collective bargaining agreement. Zaleski charges that the College acted discriminatorily by denying him the academic promotion.

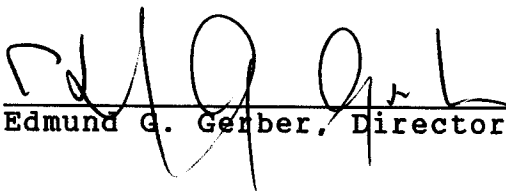
Zaleski objects to the manner in which he was evaluated. Promotional criteria are not mandatorily negotiable although promotional procedures are. Snitow v. Rutgers University, 103 N.J. 116 (1986); Council of New Jersey State College Locals, NJSFT/AFT/AFL-CIO v. State Board of Higher Education, 91 N.J. 18 (1982); State of New Jersey v. State Employees Association, 78 N.J. 54 (1978); Township of Woodbridge, P.E.R.C. No. 86-46, 11 NJPER 679 (¶16235 1985). Included among negotiable procedures are guarantees that employees meeting all of the employer's promotional criteria will be considered for promotion. State Supervisory at 92; State v. State Troopers NCO Association, 179 N.J. Super. 80, 93 (App. Div. 1981); State v. State Supervisory Employees Association, 78 N.J. 5490 (1978). But, an employer has a non-negotiable managerial prerogative to set criteria for hiring and/or promotions and to determine qualifications for a vacancy. Board of Education of Township of North Bergen v. North Bergen Federation of Teachers, 141 N.J. Super. 97 (App. Div. 1976); Teaneck Board of Education v. Teaneck Teachers Association, 94 N.J. 9 (1983); Sayreville Board of Education, P.E.R.C. No. 87-106, 13 NJPER 264 (¶18108 1987); Pascack Valley Regional Board of Education, P.E.R.C. No. 77-55, 3 NJPER 114 (1977).

Zaleski contends that the College's selection method for promotions (point system) is not in compliance with any procedures that are set forth in the contract. He alleges that the College's actions are thus in violation of the Act.

Although the procedure for promotions are negotiable, Zaleski does not have standing to allege that the College refused to negotiate in good faith. Such a charge can be filed only by the party to whom these rights and obligations flow, i.e., the majority representative. Accordingly, the charging party in this matter, as an individual, lacks standing to maintain a claim that an employer has violated subsection 5.4(a)(5). Rutgers University, P.E.R.C. No. 88-130, 14 NJPER 414 (¶19166 1988); City of Atlantic City, D.U.P. No. 88-6, 13 NJPER 805 (¶18308 1987); City of Jersey City, P.E.R.C. No. 87-56, 12 NJPER 853 (¶17329 1986). Zaleski fails to allege facts, which if true, would constitute a violation of subsections 5.4(a)(1) and/or (a)(5).

There is not a sufficient basis upon which to issue a complaint in this matter.^{4/} Accordingly, we decline to issue a complaint. The unfair practice charge is dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Edmund G. Gerber, Director

DATED: May 8, 1989
Trenton, New Jersey

^{4/} The charging party has not alleged any facts which might constitute violation of §1, 3 or 7 of the Act.